

MT LEGISLATIVE HISTORY

Chapter HJR 21 1982

Bill (H) 800 S _____

Original bill & hist. ____C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) FEB 19 ☒ C

Hearing Date(s) MAR 13 ☒ C

_____ ☐ C

MAR 17 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out FEB 19 ☒ C

MAR 17 ☒ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY-MARY HUBER

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0890	4/02	4/07		ADVERSE REPORT		4/9
HANNAH, TOM				CHANGE DISTRIBUTION OF DISTRICT COURT FUNDING FROM MOTOR VEHICLE FEES		
HJ0013	2/16	3/13		CONCUR		3/13
KEENAN, NANCY				JOINT RESOLUTION URGING COURT ADOPTION OF GUIDELINES FOR CHILD ABUSE WITNESS		
HJ0021	3/02	3/11		CONCUR		3/17
MERCER, JOHN				URGE COURT TO LIMIT PEREMPTORY CHALLENGE FOR SUBSTITUTION OF JUDGE		

Judiciary Committee
Minutes of the meeting
March 11, 1987
page 3

the fee deals with filing in the wrong county, so the person will have to refile again in the right county. He said the House deleted that.

Representative Pistoria closed.

EXECUTIVE ACTION:

ACTION ON HB 53: Senator Blaylock moved to strike the previous adopted amendments because in the bill Valencia found a statute that will keep the maintainance of the Old Supreme Court Chambers up. The motion CARRIED. Senator Blaylock moved the bill BE CONCURRED IN. The motion CARRIED.

CONSIDERATION OF HJR 21: Representative John Mercer of Polson presented HJR 21 (see Exhibit 3).

PROPOSERS: None

OPPOSERS: Pat Melby, Montana State Bar Association, said that HJR 21 will cause someone to pay a \$100 filing fee for a second judge to come to a county and do a trial. He said the first judge was disqualified, but the first judge picks the second judge.

Karl Englund, Montana Trial Lawyers Association, opposed the bill because a second judge will have to be "broken in" to a case by a lawyer that has been with the case for months and then part of the trial which the first judge was disqualified at.

John Hoyt, Great Falls lawyer, opposed the bill also.

DISCUSSION ON HJR 21: Senator Pinsoneault asked what the sister states do with this kind of situation. Mr. Hoyt said some of the states can have up to three judges for a trial, while other only allow one no matter what. Mr. Englund commented that he rarely uses a challenge to have another judge come into one of his trials.

Representative Mercer closed on HJR 21.

EXECUTIVE ACTION

ACTION ON HB 664: Senator Blaylock moved the bill BE CONCURRED IN. The motion CARRIED.

ACTION ON HB 396: Senator Pinsoneault moved the bill BE CONCURRED IN. The motion CARRIED with Senator Blaylock voting no.

ACTION ON HB 558: Senator Yellowtail commented that there are ways to conceal alcohol in drinks and drugs also. Senator Crippen said the question is if someone put something in your drink, if you are responsible

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Ma

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

DATE March 11

COMMITTEE ON _____

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 11

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blavlock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

NAME :

DATE: 3-11-84

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SUMMARY OF HJR21 (MERCER)

(Prepared by Senate Judiciary Committee staff)

HJR21 is a joint resolution urging the Montana Supreme Court to limit each party in a lawsuit to one peremptory challenge for substitution of judges. A peremptory challenge is a challenge without cause and is in addition to disqualification of a judge for cause. The Supreme Court has jurisdiction over the courts and establishes the Rules of Civil Procedure. The Legislature can disapprove the rules in either of the two sessions following promulgation (Article VII, section 2 of the Montana Constitution). In this instance, the time for the Legislature to disapprove the rules has passed.

Under current Court rules, each party in a criminal case is allowed one peremptory challenge of a judge but in civil cases, each party is allowed two peremptory challenges. This resolution urges the Court to amend the rules to allow only one peremptory challenge in civil cases.

COMMENTS: None.

C:\LANE\WP\SUMHJR21.

Larry Akey, Secretary of State's Office, presented amendments to HB 504. (Exhibit 11)

Senator Mazurek thought 20 days was a little late. Mr. Akey said there is a period of 20 days before the ballot is voted on. Rep. Kadas felt the amendments put a time limit on the procedural initiatives which he didn't like. The committee WAITED ON ACTION.

ACTION ON HOUSE BILL 805: Senator Halligan said people are going to drive, no matter what you tell them. Senator Blaylock moved to TABLE the bill. The motion CARRIED with Senator Bishop voting no.

ACTION ON HOUSE BILL 277: Senator Halligan moved the Connelly amendments. Senator Mazurek stated it might be hard to get this through with a conference committee. The motion CARRIED. Senator Blaylock mentioned on page 3, lines 2-3, the word "seized pursuant" doesn't really need to be in there. Larry Majerus said that was fine because seized is not used very often. Senator Halligan moved the amendment to strike "seized pursuant" from page 3, lines 2-3. The motion carried.

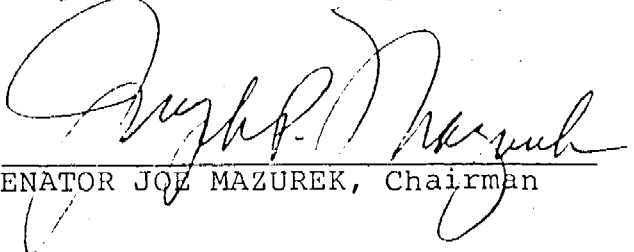
Senator Halligan moved the bill BE CONCURRED IN AS AMENDED. The motion CARRIED with Senator Beck voting no.

ACTION ON HOUSE JOINT RESOLUTION 21: Senator Mazurek did not like the idea that the first judge pick the second judge, because if the first one is a bad judge, then he might pick a second judge who is not very good. He did say this probably wouldn't be used that often.

Senator Pinsoneault moved the resolution BE CONCURRED IN. The motion CARRIED. (See roll call sheet)

ACTION ON HOUSE BILL 566: Senator Halligan moved an amendment to HB 566. (See Standing Committee Report) The motion carried. Senator Brown moved HB 566 BE CONCURRED IN AS AMENDED. The motion CARRIED.

ADJOURNMENT: The committee adjourned at 12:10 p.m.


SENATOR JOE MAZUREK, Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 17

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date March 17 1987 Bill No. HJR 21 Time 11:45am

NAME	YES	NO
Senator Joe Mazurek, Chairman		X
Senator Bruce Crippen, Vice Chairman		X
*Senator Tom Beck	X	
Senator Al Bishop		X
Senator Chet Blaylock	X	
Senator Bob Brown	X	
Senator Jack Galt	X	
Senator Mike Halligan	X	
Senator Dick Pinsoneault	X	
Senator Bill Yellowtail		X

Secretary _____

Chairman _____

Motion: _____

STANDING COMMITTEE REPORT

March 17 1937

MR. PRESIDENT

We, your committee on.....SENATE JUDICIARY.....

having had under consideration.....HOUSE JOINT RESOLUTION.....HOUSE..... No. 21.....

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Urge court to limit peremptory challenge for substitution of judge.
Mercer (Pinsoneault)

Respectfully report as follows: That.....HOUSE JOINT RESOLUTION No. 21.....

~~DO NOT PASS~~

~~DO NOT PASS~~

BE CONCURRED IN

Senator Mazurek

Chairman.

subcommittee that Rep. Miles proposal is not necessary. Rep. Miles stated that this committee has taken a lot of time to spell out exactly what we mean on such issues and this should be made clear in the bill. Rep. Addy suggested language with regard to the UCC regulations. Rep. Mercer stated that he does not have an objection to that amendment but it should be broadened to say that the action brought under the UCC or the Montana Commercial Code as permitted by 33-18-201 be inserted.

Rep. Mercer moved that amendment. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached).

Rep. Addy moved that HB 592 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 14-1 with Rep. Miles dissenting. HB 592 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 740:

Rep. Cobb moved that HB 740 DO PASS. He moved the proposed amendments. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Cobb moved that HB 740 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 740 DO PASS AS AMENDED.

ACTION ON HOUSE JOINT RESOLUTION NO. 21:

Rep. Mercer moved that HJR 21 DO PASS. Question was called and a voice vote was taken. The motion CARRIED 14-1, with Rep. Addy dissenting. HJR 21 DO PASS.

ACTION ON HOUSE BILL NO. 737:

Rep. Keller moved that HB 737 DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 73 DO PASS.

ACTION ON HOUSE BILL NO. 240:

Rep. Mercer moved that HB 240 DO PASS. Rep. Mercer moved the amendments in their entirety and explained them. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Brown moved to amend on page 5, line 8. Reps. Miles and Mercer agreed with the amendment. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Mercer moved that HB 240 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 15-1. HB 240 DO PASS AS AMENDED.

PROPOSERS:

LARRY HERMAN, Judge, Laurel, stated that DONALD BJERTNESS, City Court Judge, Billings, wished to go on record in support of this bill and written testimony was submitted. (Exhibit A). Judge Herman stated further that HB 758 is constructive legislation and will improve the administration of justice in the large metropolitan areas in Montana and he submitted written testimony. (Exhibit B).

ROBERT TUCKER, City Judge, Great Falls, submitted written testimony. (Exhibit C).

OPPOSERS:

JAMES A. HAYNES, Montana Magistrates Association, opposed this legislation and submitted written testimony. (Exhibit D).

There were no questions.

Rep. Whalen closed the hearing on HB 758.

HOUSE BILL NO. 761, Rep. Thoft, District No. 63, sponsor, stated that this bill is an act providing that when bail is set at \$1,000.00 or less, the defendant may furnish bail by paying a fee to the clerk of the court in an amount of cash equal to ten percent of the required bail. It is to be signed by the defendant in favor of the county and provides that the county shall use the cash fee to fund the county public defender's office or court-appointed counsel system.

PROPOSERS:

JOHN W. ROBINSON, Attorney, Corvallis, stated that this proposal would provide additional money for the courts and the money would come from the people who are creating the problem. The burden on the local taxpayer would be decreased. He presented written testimony. (Exhibit A).

There were no further proponents, no opponents and no questions.

Rep. Thoft closed the hearing on HB 761.

HOUSE JOINT RESOLUTION NO. 21, Rep. Mercer, District No. 50, stated that the Supreme Court, by its own rules has provided that if there are two peremptory challenges in a civil action and either by statute or rule has said that there can only be one in a criminal action. A judge can be disqualified two times in a civil case, but only once in a criminal case. This bill will urge the Supreme Court to amend the

rule on peremptory challenges to make it only one disqualification in a civil action. In the interest of consistency, he urged a do pass recommendation on this bill.

There were no proponents, no opponents and no question.

Rep. Mercer closed the hearing on HJR 21.

HOUSE BILL NO. 754, Rep. Bradley, District No. 79, stated that this bill is requested by The Water Policy Committee. It changes the Water Judge appointment process to expand the population of eligible candidates and it includes a judicial nomination commission process, providing for adjudication by priority basins and authorizing an appropriation for random sampling and analysis of claims within decrees issued by the water courts. She pointed out that the first 2/3 of the bill deals with minor changes of the water judge appointment process. She stated that the qualifications are revised on the level of district court judge and it goes through the judicial commission process. It will then be submitted to the Supreme Court Chief Justice. After the Chief has made a selection, it will then go to a Senate confirmation. She presented a Statement of Intent. (Exhibit A). She explained that page 8 deals with the random sampling of decrees and that this was the committee's effort in listening to all sides of the adjudication issue to come up with some kind of a compromise. The scientific sampling is estimated to cost \$29,000.00 and it will be contracted out.

PROPONENTS:

REP. DENNIS IVERSON stated that he strongly supports the bill and there is a legitimate dispute between the water court and DNRC. This bill does not address this, but it does touch upon the dispute in a way that will make matters better. He urged support for this legislation.

LARRY FASBENDER, Director of the Department of Natural Resources and Conservation, pointed out that the provisions in this legislation do improve the situation by expanding the pool by which judges can be drawn and they are interested in the priority of basins.

OPPONENTS:

ED STEINMETZ, Water Court, Bozeman, stated that the water court is neutral on the sections of the bill dealing with the selection of water judges and prioritization of basins, although there is a financial impact of the selection of water judges provision. They are opposed to the section on random sampling because there has been no showing of

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 19, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)			✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

FEBRUARY 19, 1937

Mr. Speaker: We, the committee on JUDICIARY
report HOUSE BILL NO. HJR 21

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

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